GPN-J.332-ARCHB-8.94-1310500-ALA4 Spl-H.C.A.S.C.D.79e

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 426 OF 1998

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.)

Court's or Judge's orders

Mr. A.S. Rao for the Petitioner.

Mrs. S.S. Bhende, A.G.P. for Respondent No. 3.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 07, 2005
P.C.

. The Petitioner was one of the Respondents in the complaint initially filed by Respondent No. 4 before the Consumer Dispute Redressal Forum. Notice was served on the Petitioner. Inspite of the Petitioner's objection an order came tobe passed on 15.1.1997. From the copy of the judgemnet filed before this court, it appears that in the cause title there is amendment and Opponent No. 3 is merely shown as Sanjivani Saving Investment (I) Ltd. Branch Bhigwan, Taluka Indapur, District Pune. The case of the Petitioner is that this judgement was never communicated to him.

. As the order of the Consumer Forum was not complied with, proceedings were initiated under Section 27 of the Consumer Protection Act, 1986 for non-complinace with the order. The Judgement came to be passed on 25.9.1997 as appears from the order sheet which is annexed by the Petitioner as Exh. C. The order sheet shows that the matter proceeded exparte against Opponent Nos. 1 and 3. In the order of 25.9.1997 all the opponents were sentenced by way of simple imprisonment for three years. It is this order which is the subject matter of the present challenge. Perusal of Section 27 would show that Forum therein had been conferred powers of judicial Magistrate. The trial of offences and deemed to be by judicial Magistrate of the First Class. In the instant case, again from the averments in the petition, more specifically Paras 4(f) and (g) it becomes clear that a registered letter sent to the Petitioner was returned back with postal endorsement "Addressee out of station, returned to sender". The District Forum treated the remark as proper service.

. If Section 27 is considered and even if summary procedure of Cr.P.C. has to be

followed, it will be clear that summons has not been served or notice for appearance on petitioner as required. In the absence of the same, conviction of the petitioner by order dated 25.9.1997 will be clearly without jurisdiction. In the light of that the following order :

. Rule made partly absolute in terms of Prayer Clause III of Para 13. It will be open if permissible in law, for the Pune District Consumer Redressal Forum to proceed against the petitioner after following procedure including service. Counsel for the petitioner states that the address for serving summons on the petitioner is as under :

At and post Shatphal Ghade,
Taluka Indapur, District Pune.

. Rule made absoluet accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P.KUKDAY,J.)